



Reprinted
February 23, 2005

SENATE BILL No. 508

DIGEST OF SB 508 (Updated February 22, 2005 5:00 pm - DI 102)

Citations Affected: IC 22-3.

Synopsis: Worker's compensation exemption. Exempts from worker's compensation and occupational disease law: (1) a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code to the extent the corporation enters into an independent contractor agreement for the performance of youth coaching services on a part-time basis; and (2) the coaches with whom the corporation enters into the agreement.

Effective: July 1, 2005.

Clark

January 18, 2005, read first time and referred to Committee on Pensions and Labor.
February 10, 2005, reported favorably — Do Pass.
February 22, 2005, read second time, amended, ordered engrossed.

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SB 508—LS 7882/DI 102+



First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 508

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 22-3-2-2 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Every employer and every
3 employee, except as stated in IC 22-3-2 through IC 22-3-6, shall
4 comply with the provisions of IC 22-3-2 through IC 22-3-6 respectively
5 to pay and accept compensation for personal injury or death by
6 accident arising out of and in the course of the employment, and shall
7 be bound thereby.
8 (b) IC 22-3-2 through IC 22-3-6 does not apply to railroad
9 employees engaged in train service as:
10 (1) engineers;
11 (2) firemen;
12 (3) conductors;
13 (4) brakemen;
14 (5) flagmen;
15 (6) baggagemen; or
16 (7) foremen in charge of yard engines and helpers assigned
17 thereto.



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(c) IC 22-3-2 through IC 22-3-6 does not apply to employees of municipal corporations in Indiana who are members of:

- (1) the fire department or police department of any such municipality; and
- (2) a firefighters' pension fund or of a police officers' pension fund.

However, if the common council elects to purchase and procure worker's compensation insurance to insure said employees with respect to medical benefits under IC 22-3-2 through IC 22-3-6, the medical provisions of IC 22-3-2 through IC 22-3-6 apply to members of the fire department or police department of any such municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

(d) IC 22-3-2 through IC 22-3-6 do not apply to the following:

(1) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis.

(2) A nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.

~~(d)~~ (e) When any municipal corporation purchases or procures worker's compensation insurance covering members of the fire department or police department who are also members of a firefighters' pension fund or a police officers' pension fund, and pays the premium or premiums for such insurance, the payment of such premiums is a legal and allowable expenditure of funds of any municipal corporation.

~~(e)~~ (f) Except as provided in ~~subsection (f)~~, **subsection (g)**, where the common council has procured worker's compensation insurance under this section, any member of such fire department or police department employed in the city carrying such worker's compensation insurance under this section is limited to recovery of medical and surgical care, medicines, laboratory, curative and palliative agents and means, x-ray, diagnostic and therapeutic services to the extent that such services are provided for in the worker's compensation policy procured by such city, and shall not also recover in addition to that policy for such same benefits provided in IC 36-8-4.

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(f) (g) If the medical benefits provided under a worker's compensation policy procured by the common council terminate for any reason before the police officer or firefighter is fully recovered, the common council shall provide medical benefits that are necessary until the police officer or firefighter is no longer in need of medical care.

(g) (h) The provisions of IC 22-3-2 through IC 22-3-6 apply to:

- (1) members of the Indiana general assembly; and
- (2) field examiners of the state board of accounts.

SECTION 2. IC 22-3-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) IC 22-3-2 through IC 22-3-6 shall not apply to:

- (1) casual laborers (as defined in IC 22-3-6-1); ~~not to~~
- (2) farm or agricultural employees; ~~not to~~
- (3) household employees; ~~not to or~~
- (4) **a person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis.**

IC 22-3-2 through IC 22-3-6 do not apply to the employers or contractors of such the persons listed in this subsection.

(b) An employer who is exempt under this section from the operation of the compensation provisions of this chapter may at any time waive such exemption and thereby accept the provisions of this chapter by giving notice as provided in subsection (c).

(c) The notice of acceptance referred to in subsection (b) shall be given thirty (30) days prior to any accident resulting in injury or death, provided that if any such injury occurred less than thirty (30) days after the date of employment, notice of acceptance given at the time of employment shall be sufficient notice thereof. The notice shall be in writing or print in a substantial form prescribed by the worker's compensation board and shall be given by the employer by posting the same in a conspicuous place in the plant, shop, office, room, or place where the employee is employed, or by serving it personally upon ~~him~~; **the employee**; and shall be given by the employee by sending the same in registered letter addressed to the employer at ~~his~~ **the employer's** last known residence or place of business, or by giving it personally to the employer, or any of ~~his~~ **the employer's** agents upon whom a summons in civil actions may be served under the laws of the state.

(d) A copy of the notice in prescribed form shall also be filed with the worker's compensation board, within five (5) days after its service in such manner upon the employee or employer.

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SECTION 3. IC 22-3-2-14 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) As used in this
section, "person" does not include:

(1) an owner who contracts for performance of work on the
owner's owner occupied residential property; or

**(2) a nonprofit corporation that is recognized as tax exempt
under Section 501(c)(3) of the Internal Revenue Code (as
defined in IC 6-3-1-11(a)) to the extent the corporation enters
into an independent contractor agreement with a person for
the performance of youth coaching services on a part-time
basis.**

(b) The state, any political division thereof, any municipal
corporation, any corporation, limited liability company, partnership, or
person, contracting for the performance of any work exceeding one
thousand dollars (\$1,000) in value by a contractor subject to the
compensation provisions of IC 22-3-2 through IC 22-3-6, without
exactng from such contractor a certificate from the worker's
compensation board showing that such contractor has complied with
section 5 of this chapter, IC 22-3-5-1, and IC 22-3-5-2, shall be liable
to the same extent as the contractor for compensation, physician's fees,
hospital fees, nurse's charges, and burial expenses on account of the
injury or death of any employee of such contractor, due to an accident
arising out of and in the course of the performance of the work covered
by such contract.

(c) Any contractor who shall sublet any contract for the performance
of any work, to a subcontractor subject to the compensation provisions
of IC 22-3-2 through IC 22-3-6, without obtaining a certificate from the
worker's compensation board showing that such subcontractor has
complied with section 5 of this chapter, IC 22-3-5-1, and IC 22-3-5-2,
shall be liable to the same extent as such subcontractor for the payment
of compensation, physician's fees, hospital fees, nurse's charges, and
burial expenses on account of the injury or death of any employee of
such subcontractor due to an accident arising out of and in the course
of the performance of the work covered by such subcontract.

(d) The state, any political division thereof, any municipal
corporation, any corporation, limited liability company, partnership,
person, or contractor paying compensation, physician's fees, hospital
fees, nurse's charges, or burial expenses under this section may recover
the amount paid or to be paid from any person who, independently of
such provisions, would have been liable for the payment thereof and
may, in addition, recover the litigation expenses and attorney's fees
incurred in the action before the worker's compensation board as well

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as the litigation expenses and attorney's fees incurred in an action to collect the compensation, medical expenses, and burial expenses.

(e) Every claim filed with the worker's compensation board under this section shall be instituted against all parties liable for payment. The worker's compensation board, in an award under subsection (b), shall fix the order in which said parties shall be exhausted, beginning with the immediate employer, and, in an award under subsection (c), shall determine whether the subcontractor has the financial ability to pay the compensation and medical expenses when due and, if not, shall order the contractor to pay the compensation and medical expenses.

SECTION 4. IC 22-3-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the context otherwise requires:

(a) "Employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of IC 22-3-2-6 and IC 22-3-3-31. If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5. **The term does not include a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.**

(b) "Employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer.

(1) An executive officer elected or appointed and empowered in

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1 accordance with the charter and bylaws of a corporation, other
 2 than a municipal corporation or governmental subdivision or a
 3 charitable, religious, educational, or other nonprofit corporation,
 4 is an employee of the corporation under IC 22-3-2 through
 5 IC 22-3-6.

6 (2) An executive officer of a municipal corporation or other
 7 governmental subdivision or of a charitable, religious,
 8 educational, or other nonprofit corporation may, notwithstanding
 9 any other provision of IC 22-3-2 through IC 22-3-6, be brought
 10 within the coverage of its insurance contract by the corporation by
 11 specifically including the executive officer in the contract of
 12 insurance. The election to bring the executive officer within the
 13 coverage shall continue for the period the contract of insurance is
 14 in effect, and during this period, the executive officers thus
 15 brought within the coverage of the insurance contract are
 16 employees of the corporation under IC 22-3-2 through IC 22-3-6.

17 (3) Any reference to an employee who has been injured, when the
 18 employee is dead, also includes the employee's legal
 19 representatives, dependents, and other persons to whom
 20 compensation may be payable.

21 (4) An owner of a sole proprietorship may elect to include the
 22 owner as an employee under IC 22-3-2 through IC 22-3-6 if the
 23 owner is actually engaged in the proprietorship business. If the
 24 owner makes this election, the owner must serve upon the owner's
 25 insurance carrier and upon the board written notice of the
 26 election. No owner of a sole proprietorship may be considered an
 27 employee under IC 22-3-2 through IC 22-3-6 until the notice has
 28 been received. If the owner of a sole proprietorship is an
 29 independent contractor in the construction trades and does not
 30 make the election provided under this subdivision, the owner
 31 must obtain an affidavit of exemption under IC 22-3-2-14.5.

32 (5) A partner in a partnership may elect to include the partner as
 33 an employee under IC 22-3-2 through IC 22-3-6 if the partner is
 34 actually engaged in the partnership business. If a partner makes
 35 this election, the partner must serve upon the partner's insurance
 36 carrier and upon the board written notice of the election. No
 37 partner may be considered an employee under IC 22-3-2 through
 38 IC 22-3-6 until the notice has been received. If a partner in a
 39 partnership is an independent contractor in the construction trades
 40 and does not make the election provided under this subdivision,
 41 the partner must obtain an affidavit of exemption under
 42 IC 22-3-2-14.5.

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(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

(A) they are licensed real estate agents;

(B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and

(C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(7) A person is an independent contractor in the construction trades and not an employee under IC 22-3-2 through IC 22-3-6 if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(8) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(9) A member or manager in a limited liability company may elect to include the member or manager as an employee under IC 22-3-2 through IC 22-3-6 if the member or manager is actually engaged in the limited liability company business. If a member or manager makes this election, the member or manager must serve upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth in IC 22-3-2-2.5.

(11) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis is not an employee for purposes of IC 22-3-2 through IC 22-3-6.

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(c) "Minor" means an individual who has not reached seventeen (17) years of age.

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is a minor who, at the time of the accident, is employed, required, suffered, or permitted to work in violation of IC 20-8.1-4-25, the amount of compensation and death benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an approved program under IC 20-10.1-6-7 shall be considered a full-time employee for the purpose of computing compensation for permanent impairment under IC 22-3-3-10. The average weekly wages for such a student shall be calculated as provided in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of injury, divided by fifty-two (52), except as follows:

(1) If the injured employee lost seven (7) or more calendar days during this period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be

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divided by the number of weeks and parts thereof remaining after the time lost has been deducted.

(2) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employee's employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages, as defined in this subsection, regard shall be had to the average weekly amount which during the fifty-two (52) weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

(3) Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of ~~his~~ **the employee's** earnings.

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-10.1-6-7, the following formula shall be used. Calculate the product of:

(A) the student employee's hourly wage rate; multiplied by

(B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

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(1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.

(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(i) "Medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under IC 22-3-2 through IC 22-3-6.

(j) "Pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 5. IC 22-3-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Every employer and every employee, except as stated in this chapter, shall comply with this chapter, requiring the employer and employee to pay and accept compensation for disablement or death by occupational disease arising out of and in the course of the employment, and shall be bound thereby.

(b) This chapter does not apply to the following:

(1) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis.

(2) A nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time

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basis.

~~(b)~~ (c) This chapter does not apply to employees of municipal corporations in Indiana who are members of:

(1) the fire department or police department of any such municipality; and

(2) a firefighters' pension fund or a police officers' pension fund.

However, if the common council elects to purchase and procure worker's occupational disease insurance to insure said employees with respect to medical benefits under this chapter, the medical provisions apply to members of the fire department or police department of any such municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

~~(c)~~ (d) When any municipal corporation purchases or procures worker's occupational disease insurance covering members of the fire department or police department who are also members of a firefighters' pension fund or a police officers' pension fund and pays the premium or premiums for the insurance, the payment of the premiums is a legal and allowable expenditure of funds of any municipal corporation.

~~(d)~~ (e) Except as provided in ~~subsection (c)~~; **subsection (f)**, where the common council has procured worker's occupational disease insurance as provided under this section, any member of the fire department or police department employed in the city carrying the worker's occupational disease insurance under this section is limited to recovery of medical and surgical care, medicines, laboratory, curative and palliative agents and means, x-ray, diagnostic and therapeutic services to the extent that the services are provided for in the worker's occupational disease policy so procured by the city, and may not also recover in addition to that policy for the same benefits provided in IC 36-8-4.

~~(e)~~ (f) If the medical benefits provided under a worker's occupational disease policy procured by the common council terminate for any reason before the police officer or firefighter is fully recovered, the common council shall provide medical benefits that are necessary until the police officer or firefighter is no longer in need of medical care.

~~(f)~~ (g) Nothing in this section affects the rights and liabilities of employees and employers had by them prior to April 1, 1963, under this chapter.

SECTION 6. IC 22-3-7-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) As used in this chapter, "employer" includes the state and any political subdivision, any

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1 municipal corporation within the state, any individual or the legal
 2 representative of a deceased individual, firm, association, limited
 3 liability company, or corporation or the receiver or trustee of the same,
 4 using the services of another for pay. A parent corporation and its
 5 subsidiaries shall each be considered joint employers of the
 6 corporation's, the parent's, or the subsidiaries' employees for purposes
 7 of sections 6 and 33 of this chapter. Both a lessor and a lessee of
 8 employees shall each be considered joint employers of the employees
 9 provided by the lessor to the lessee for purposes of sections 6 and 33
 10 of this chapter. The term also includes an employer that provides
 11 on-the-job training under the federal School to Work Opportunities Act
 12 (20 U.S.C. 6101 et seq.) to the extent set forth under section 2.5 of this
 13 chapter. If the employer is insured, the term includes ~~his~~ **the**
 14 **employer's** insurer so far as applicable. However, the inclusion of an
 15 employer's insurer within this definition does not allow an employer's
 16 insurer to avoid payment for services rendered to an employee with the
 17 approval of the employer. **The term does not include a nonprofit**
 18 **corporation that is recognized as tax exempt under Section**
 19 **501(c)(3) of the Internal Revenue Code (as defined in**
 20 **IC 6-3-1-11(a)) to the extent the corporation enters into an**
 21 **independent contractor agreement with a person for the**
 22 **performance of youth coaching services on a part-time basis.**

23 (b) As used in this chapter, "employee" means every person,
 24 including a minor, in the service of another, under any contract of hire
 25 or apprenticeship written or implied, except one whose employment is
 26 both casual and not in the usual course of the trade, business,
 27 occupation, or profession of the employer. For purposes of this chapter
 28 the following apply:

29 (1) Any reference to an employee who has suffered disablement,
 30 when the employee is dead, also includes ~~his~~ **the employee's**
 31 legal representative, dependents, and other persons to whom
 32 compensation may be payable.

33 (2) An owner of a sole proprietorship may elect to include ~~himself~~
 34 **the owner** as an employee under this chapter if ~~he~~ **the owner** is
 35 actually engaged in the proprietorship business. If the owner
 36 makes this election, ~~he~~ **the owner** must serve upon ~~his~~ **the**
 37 **owner's** insurance carrier and upon the board written notice of
 38 the election. No owner of a sole proprietorship may be considered
 39 an employee under this chapter unless the notice has been
 40 received. If the owner of a sole proprietorship is an independent
 41 contractor in the construction trades and does not make the
 42 election provided under this subdivision, the owner must obtain

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an affidavit of exemption under section 34.5 of this chapter.

(3) A partner in a partnership may elect to include ~~himself the partner~~ as an employee under this chapter if ~~he the partner~~ is actually engaged in the partnership business. If a partner makes this election, ~~he the partner~~ must serve upon ~~his the partner's~~ insurance carrier and upon the board written notice of the election. No partner may be considered an employee under this chapter until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under section 34.5 of this chapter.

(4) Real estate professionals are not employees under this chapter if:

(A) they are licensed real estate agents;

(B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and

(C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(5) A person is an independent contractor in the construction trades and not an employee under this chapter if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(6) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of this chapter. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(7) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth under section 2.5 of this chapter.

(8) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue

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Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis is not an employee for purposes of this chapter.

(c) As used in this chapter, "minor" means an individual who has not reached seventeen (17) years of age. A minor employee shall be considered as being of full age for all purposes of this chapter. However, if the employee is a minor who, at the time of the last exposure, is employed, required, suffered, or permitted to work in violation of the child labor laws of this state, the amount of compensation and death benefits, as provided in this chapter, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the disability or death of the minor, and the employer shall be wholly liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age, and who at the time of the last exposure is employed, suffered, or permitted to work at any occupation which is not prohibited by law, the provisions of this subsection prescribing double the amount otherwise recoverable do not apply. The rights and remedies granted to a minor under this chapter on account of disease shall exclude all rights and remedies of the minor, his parents, his personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of any disease.

(d) This chapter does not apply to casual laborers as defined in subsection (b), nor to farm or agricultural employees, nor to household employees, nor to railroad employees engaged in train service as engineers, firemen, conductors, brakemen, flagmen, baggagemen, or foremen in charge of yard engines and helpers assigned thereto, nor to their employers with respect to these employees. Also, this chapter does not apply to employees or their employers with respect to employments in which the laws of the United States provide for compensation or liability for injury to the health, disability, or death by reason of diseases suffered by these employees.

(e) As used in this chapter, "disablement" means the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom ~~he~~ **the employee** claims compensation or equal wages in other suitable employment, and "disability" means the state of being so incapacitated.

(f) For the purposes of this chapter, no compensation shall be payable for or on account of any occupational diseases unless

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1 disablement, as defined in subsection (e), occurs within two (2) years
 2 after the last day of the last exposure to the hazards of the disease
 3 except for the following:

4 (1) In all cases of occupational diseases caused by the inhalation
 5 of silica dust or coal dust, no compensation shall be payable
 6 unless disablement, as defined in subsection (e), occurs within
 7 three (3) years after the last day of the last exposure to the hazards
 8 of the disease.

9 (2) In all cases of occupational disease caused by the exposure to
 10 radiation, no compensation shall be payable unless disablement,
 11 as defined in subsection (e), occurs within two (2) years from the
 12 date on which the employee had knowledge of the nature of ~~his~~
 13 **the employee's** occupational disease or, by exercise of reasonable
 14 diligence, should have known of the existence of such disease and
 15 its causal relationship to ~~his~~ **the employee's** employment.

16 (3) In all cases of occupational diseases caused by the inhalation
 17 of asbestos dust, no compensation shall be payable unless
 18 disablement, as defined in subsection (e), occurs within three (3)
 19 years after the last day of the last exposure to the hazards of the
 20 disease if the last day of the last exposure was before July 1, 1985.

21 (4) In all cases of occupational disease caused by the inhalation
 22 of asbestos dust in which the last date of the last exposure occurs
 23 on or after July 1, 1985, and before July 1, 1988, no compensation
 24 shall be payable unless disablement, as defined in subsection (e),
 25 occurs within twenty (20) years after the last day of the last
 26 exposure.

27 (5) In all cases of occupational disease caused by the inhalation
 28 of asbestos dust in which the last date of the last exposure occurs
 29 on or after July 1, 1988, no compensation shall be payable unless
 30 disablement (as defined in subsection (e)) occurs within
 31 thirty-five (35) years after the last day of the last exposure.

32 (g) For the purposes of this chapter, no compensation shall be
 33 payable for or on account of death resulting from any occupational
 34 disease unless death occurs within two (2) years after the date of
 35 disablement. However, this subsection does not bar compensation for
 36 death:

37 (1) where death occurs during the pendency of a claim filed by an
 38 employee within two (2) years after the date of disablement and
 39 which claim has not resulted in a decision or has resulted in a
 40 decision which is in process of review or appeal; or

41 (2) where, by agreement filed or decision rendered, a
 42 compensable period of disability has been fixed and death occurs

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within two (2) years after the end of such fixed period, but in no event later than three hundred (300) weeks after the date of disablement.

(h) As used in this chapter, "billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(i) As used in this chapter, "billing review standard" means the data used by a billing review service to determine pecuniary liability.

(j) As used in this chapter, "community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.

(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(k) As used in this chapter, "medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under this chapter.

(l) As used in this chapter, "pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under this chapter in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 7. IC 22-3-7-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 34. (a) As used in this section, "person" does not include:

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(1) an owner who contracts for performance of work on the owner's owner occupied residential property; or

(2) a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.

(b) Every employer bound by the compensation provisions of this chapter, except the state, counties, townships, cities, towns, school cities, school towns, school townships, other municipal corporations, state institutions, state boards, and state commissions, shall insure the payment of compensation to the employer's employees and their dependents in the manner provided in this chapter, or procure from the worker's compensation board a certificate authorizing the employer to carry such risk without insurance. While that insurance or certificate remains in force, the employer, or those conducting the employer's business, and the employer's occupational disease insurance carrier shall be liable to any employee and the employee's dependents for disablement or death from occupational disease arising out of and in the course of employment only to the extent and in the manner specified in this chapter.

(c) Every employer who, by election, is bound by the compensation provisions of this chapter, except those exempted from the provisions by subsection (b), shall:

(1) insure and keep insured the employer's liability under this chapter in some corporation, association, or organization authorized to transact the business of worker's compensation insurance in this state; or

(2) furnish to the worker's compensation board satisfactory proof of the employer's financial ability to pay the compensation in the amount and manner and when due as provided for in this chapter.

In the latter case the board may require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred.

(d) Every employer required to carry insurance under this section shall file with the worker's compensation board in the form prescribed by it, within ten (10) days after the termination of the employer's insurance by expiration or cancellation, evidence of the employer's compliance with subsection (c) and other provisions relating to the insurance under this chapter. The venue of all criminal actions under this section lies in the county in which the employee was last exposed

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1 to the occupational disease causing disablement. The prosecuting
 2 attorney of the county shall prosecute all violations upon written
 3 request of the board. The violations shall be prosecuted in the name of
 4 the state.

5 (e) Whenever an employer has complied with subsection (c) relating
 6 to self-insurance, the worker's compensation board shall issue to the
 7 employer a certificate which shall remain in force for a period fixed by
 8 the board, but the board may, upon at least thirty (30) days notice, and
 9 a hearing to the employer, revoke the certificate, upon presentation of
 10 satisfactory evidence for the revocation. After the revocation, the board
 11 may grant a new certificate to the employer upon the employer's
 12 petition, and satisfactory proof of the employer's financial ability.

13 (f)(1) Subject to the approval of the worker's compensation board,
 14 any employer may enter into or continue any agreement with the
 15 employer's employees to provide a system of compensation, benefit, or
 16 insurance in lieu of the compensation and insurance provided by this
 17 chapter. A substitute system may not be approved unless it confers
 18 benefits upon employees and their dependents at least equivalent to the
 19 benefits provided by this chapter. It may not be approved if it requires
 20 contributions from the employees unless it confers benefits in addition
 21 to those provided under this chapter, which are at least commensurate
 22 with such contributions.

23 (f)(2) The substitute system may be terminated by the worker's
 24 compensation board on reasonable notice and hearing to the interested
 25 parties, if it appears that the same is not fairly administered or if its
 26 operation shall disclose latent defects threatening its solvency, or if for
 27 any substantial reason it fails to accomplish the purpose of this chapter.
 28 On termination, the board shall determine the proper distribution of all
 29 remaining assets, if any, subject to the right of any party in interest to
 30 take an appeal to the court of appeals.

31 (g)(1) No insurer shall enter into or issue any policy of insurance
 32 under this chapter until its policy form has been submitted to and
 33 approved by the worker's compensation board. The board shall not
 34 approve the policy form of any insurance company until the company
 35 shall file with it the certificate of the insurance commissioner showing
 36 that the company is authorized to transact the business of worker's
 37 compensation insurance in Indiana. The filing of a policy form by any
 38 insurance company or reciprocal insurance association with the board
 39 for approval constitutes on the part of the company or association a
 40 conclusive and unqualified acceptance of each of the compensation
 41 provisions of this chapter, and an agreement by it to be bound by the
 42 compensation provisions of this chapter.

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(g)(2) All policies of insurance companies and of reciprocal insurance associations, insuring the payment of compensation under this chapter, shall be conclusively presumed to cover all the employees and the entire compensation liability of the insured under this chapter in all cases in which the last day of the exposure rendering the employer liable is within the effective period of such policy.

(g)(3) Any provision in any such policy attempting to limit or modify the liability of the company or association insuring the same shall be wholly void.

(g)(4) Every policy of any company or association shall be deemed to include the following provisions:

"(A) The insurer assumes in full all the obligations to pay physician's fees, nurse's charges, hospital supplies, burial expenses, compensation or death benefits imposed upon or accepted by the insured under this chapter.

(B) This policy is subject to the provisions of this chapter relative to the liability of the insured to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefits to and for such employees, the acceptance of such liability by the insured, the adjustment, trial and adjudication of claims for such physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation, or death benefits.

(C) Between this insurer and the employee, notice to or knowledge of the occurrence of the disablement on the part of the insured (the employer) shall be notice or knowledge thereof, on the part of the insurer. The jurisdiction of the insured (the employer) for the purpose of this chapter is the jurisdiction of this insurer, and this insurer shall in all things be bound by and shall be subject to the awards, judgments and decrees rendered against the insured (the employer) under this chapter.

(D) This insurer will promptly pay to the person entitled to the same all benefits conferred by this chapter, including all physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, and all installments of compensation or death benefits that may be awarded or agreed upon under this chapter. The obligation of this insurer shall not be affected by any default of the insured (the employer) after disablement or by any default in giving of any notice required by this policy, or otherwise. This policy is a direct promise by this insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for hospital services, charges for

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hospital supplies, charges for burial, compensation, or death benefits, and shall be enforceable in the name of the person.

(E) Any termination of this policy by cancellation shall not be effective as to employees of the insured covered hereby unless at least thirty (30) days prior to the taking effect of such cancellation, a written notice giving the date upon which such termination is to become effective has been received by the worker's compensation board of Indiana at its office in Indianapolis, Indiana.

(F) This policy shall automatically expire one (1) year from the effective date of the policy, unless the policy covers a period of three (3) years, in which event, it shall automatically expire three (3) years from the effective date of the policy. The termination either of a one (1) year or a three (3) year policy, is effective as to the employees of the insured covered by the policy."

(g)(5) All claims for compensation, nurse's charges, hospital services, hospital supplies, physician's fees, or burial expenses may be made directly against either the employer or the insurer or both, and the award of the worker's compensation board may be made against either the employer or the insurer or both.

(g)(6) If any insurer shall fail to pay any final award or judgment (except during the pendency of an appeal) rendered against it, or its insured, or, if it shall fail to comply with this chapter, the worker's compensation board shall revoke the approval of its policy forms, and shall not accept any further proofs of insurance from it until it shall have paid the award or judgment or complied with this chapter, and shall have resubmitted its policy form and received the approval of the policy by the industrial board.

(h) No policy of insurance covering the liability of an employer for worker's compensation shall be construed to cover the liability of the employer under this chapter for any occupational disease unless the liability is expressly accepted by the insurance carrier issuing the policy and is endorsed in that policy. The insurance or security in force to cover compensation liability under this chapter shall be separate from the insurance or security under IC 22-3-2 through IC 22-3-6. Any insurance contract covering liability under either part of this article need not cover any liability under the other.

(i) For the purpose of complying with subsection (c), groups of employers are authorized to form mutual insurance associations or reciprocal or interinsurance exchanges subject to any reasonable conditions and restrictions fixed by the department of insurance. This subsection does not apply to mutual insurance associations and

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reciprocal or interinsurance exchanges formed and operating on or before January 1, 1991, which shall continue to operate subject to the provisions of this chapter and to such reasonable conditions and restrictions as may be fixed by the worker's compensation board.

(j) Membership in a mutual insurance association or a reciprocal or interinsurance exchange so proved, together with evidence of the payment of premiums due, is evidence of compliance with subsection (c).

(k) Any person bound under the compensation provisions of this chapter, contracting for the performance of any work exceeding one thousand dollars (\$1,000) in value, in which the hazard of an occupational disease exists, by a contractor subject to the compensation provisions of this chapter without exacting from the contractor a certificate from the worker's compensation board showing that the contractor has complied with subsections (b), (c), and (d), shall be liable to the same extent as the contractor for compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such contractor, due to occupational disease arising out of and in the course of the performance of the work covered by such contract.

(l) Any contractor who sublets any contract for the performance of any work to a subcontractor subject to the compensation provisions of this chapter, without obtaining a certificate from the worker's compensation board showing that the subcontractor has complied with subsections (b), (c), and (d), is liable to the same extent as the subcontractor for the payment of compensation, physician's fees, hospital fees, nurse's charges, and burial expense on account of the injury or death of any employee of the subcontractor due to occupational disease arising out of and in the course of the performance of the work covered by the subcontract.

(m) A person paying compensation, physician's fees, hospital fees, nurse's charges, or burial expenses, under subsection (k) or (l), may recover the amount paid or to be paid from any person who would otherwise have been liable for the payment thereof and may, in addition, recover the litigation expenses and attorney's fees incurred in the action before the worker's compensation board as well as the litigation expenses and attorney's fees incurred in an action to collect the compensation, medical expenses, and burial expenses.

(n) Every claim filed with the worker's compensation board under this section shall be instituted against all parties liable for payment. The worker's compensation board, in an award under subsection (k), shall fix the order in which such parties shall be exhausted, beginning

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- 1 with the immediate employer and, in an award under subsection (l),
- 2 shall determine whether the subcontractor has the financial ability to
- 3 pay the compensation and medical expenses when due and, if not, shall
- 4 order the contractor to pay the compensation and medical expenses.

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 508, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 508 as introduced.)

HARRISON, Chairperson

Committee Vote: Yeas 7, Nays 3.

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SENATE MOTION

Madam President: I move that Senate Bill 508 be amended to read as follows:

Page 2, line 15, delete "contracts" and insert **"enters into an independent contractor agreement"**.

Page 2, line 15, delete "charitable, religious,".

Page 2, line 16, delete "educational, or other".

Page 2, line 16, delete "organization" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a))"**.

Page 2, line 17, delete "services." and insert **"services on a part-time basis."**

Page 2, line 18, delete "charitable, religious, educational, or other".

Page 2, line 19, delete "organization that contracts" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person"**.

Page 2, line 20, delete "services." and insert **"services on a part-time basis."**

Page 3, line 10, delete "contracts" and insert **"enters into an independent contractor agreement"**.

Page 3, line 10, delete "charitable, religious,".

Page 3, line 11, delete "educational, or other".

Page 3, line 11, delete "organization" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a))"**.

Page 3, line 12, delete "services." and insert **"services on a part-time basis."**

Page 3, line 41, delete "charitable, religious, educational, or other".

Page 3, line 42, delete "organization that contracts" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person"**.

Page 4, line 1, delete "services." and insert **"services on a part-time basis."**

Page 5, line 21, delete "charitable, religious,".

Page 5, line 22, delete "educational, or other".

Page 5, line 22, delete "organization that contracts" and insert **"corporation that is recognized as tax exempt under Section**

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501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person".

Page 5, line 23, delete "services." and insert **"services on a part-time basis."**

Page 7, line 24, delete "contracts" and insert **"enters into an independent contractor agreement"**.

Page 7, line 24, delete "charitable, religious,".

Page 7, line 25, delete "educational, or other".

Page 7, line 25, delete "organization" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a))"**.

Page 7, line 26, after "services" insert **"on a part-time basis"**.

Page 10, line 18, delete "contracts" and insert **"enters into an independent contractor agreement"**.

Page 10, line 18, delete "charitable, religious,".

Page 10, line 19, delete "educational, or other".

Page 10, line 19, delete "organization" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a))"**.

Page 10, line 20, delete "services." and insert **"services on a part-time basis."**

Page 10, line 21, delete "charitable, religious, educational, or other".

Page 10, line 22, delete "organization that contracts" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person"**.

Page 10, line 23, delete "services." and insert **"services on a part-time basis."**

Page 11, line 39, delete "charitable,".

Page 11, line 40, delete "religious, educational, or other".

Page 11, line 40, delete "organization that".

Page 11, line 41, delete "contracts" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person"**.

Page 11, line 41, delete "services." and insert **"services on a part-time basis."**

Page 13, line 17, delete "contracts" and insert **"enters into an independent contractor agreement"**.

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Page 13, line 17, delete "charitable, religious,".

Page 13, line 18, delete "educational, or other".

Page 13, line 18, delete "organization" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a))"**.

Page 13, line 19, after "services" insert **"on a part-time basis"**.

Page 16, line 20, delete "charitable, religious, educational, or other".

Page 16, line 21, delete "organization that contracts" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person"**.

Page 16, line 22, delete "services." and insert **"services on a part-time basis."**

(Reference is to SB 508 as printed February 11, 2005.)

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